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What is copyright?

A copyright is the set of exclusive legal rights authors have over their works for a limited period of time. In the United States, these rights are primarily defined by federal copyright acts under the authority of the U.S. Constitution.¹ The current 1976 Copyright Act,² amended many times since its enactment, gives authors exclusive rights to copy the works, distribute and sell copies, modify and adapt the works, convert the words into other formats, and publicly perform or display the works. Currently, the author's rights begin automatically when a work is created. Copyrighted works are not limited to those that bear a copyright notice or are registered. These rights prohibit others from using the works without permission or profiting from the sale or performance of these works for a fixed period of time. For more information, see What is Copyright?³

What works are protected by copyright?

Copyright protects "original works of authorship" that are "fixed in any tangible medium of expression." Expression refers to the way in which an author describes, expresses, or illustrates something. Copyrightable works now include a vast array of creative expressions, including: writings, musical works, plays, pantomimes, choreography, artwork, photography, sculptures, architecture, motion pictures, audiovisual works, sound recordings, web pages, and computer programs. Almost all works created after 1978, even those with no mention of copyright, have copyright protection.

What is not protected by copyright?

Copyright protects original expression only. Copyright does not protect the underlying ideas and facts described in an author's work. According to Section 102 (b) of the Copyright Act of 1976,

"In no case does copyright expression for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

¹ <http://caselaw.lp.findlaw.com/data/constitution/article01/>

² U.S. Copyright Office, Copyright Law of the US, <http://www.loc.gov/copyright/title17/>

³ UCOP Office of Technology Transfer, <http://www.ucop.edu/ott/crbasics.html#what>

Even though copyright does not protect ideas and facts, it is important to keep in mind that the form of expression of ideas or facts, and their arrangement and selection, may be copyrightable, i.e., under certain circumstances the way in which noncopyrightable elements are selected and arranged may be entitled to protection as a collective work.

In general, material that is not eligible for copyright protection includes ideas, facts, discoveries, items that meet patent and trademark requirements, works containing no original authorship, works with expired copyrights, and U.S. government works. Material that is ineligible for copyright protection (or patent and trademark protection) is in the public domain. For more information on public domain works, see [What types of works and information make up the public domain?](#)⁴

How do I register a copyright?

While registering a copyright of an original work is not necessary to obtain full copyright protection, it is a good idea. The benefits of copyright registration are described in [Circular 1, Copyright Registration](#).⁵ Registration with the U.S. Copyright Office is necessary in order to bring a lawsuit for infringement. Additionally, if works are registered in a timely fashion (within three months of publication or before an infringement occurs) a copyright owner may claim statutory damages and attorney's fees, in addition to actual damages and profits. Procedures to register a work are straightforward and inexpensive. To register a work, an author submits a completed application form, a \$30 filing fee, and copies of the work to the U.S. Copyright Office. For information on registration procedures, see [Circular 1, Registration Procedures](#).⁶

How long do copyrights last?

For works created after 1978, copyright generally lasts for the life of the author plus 70 years. For works made for hire, the copyright term the shorter of 95 years from publication, or 120 years from creation. For joint works the term is the lifetime of the last living author plus 70 years. In the case of anonymous or pseudonymous works, copyright lasts 95 years after publication or 120 years after creation, whichever comes first. For more information on the duration of copyright, see [Rules of thumb for public domain works](#).⁷

How do I protect my copyright?

As soon as an author's original work is fixed in a tangible form, it is automatically protected by copyright law, including material on the Internet. Consequently, copyright owners can assert infringement claims and pursue corrective and/or legal measures. An owner, possibly with assistance from an attorney, could send a "cease and desist" letter to block further infringements or initiate a takedown notice to the infringer's Internet Service Provider (ISP) under the [Digital Millennium Copyright \(DMCA\) Act](#).⁸ An author could also make an infringement claim in court to secure an equitable remedy for the infringement provided the work was registered with the U.S. Copyright Office. A favorable court ruling could include an injunction that blocks further infringements and an award of actual damages to compensate for any losses that may have incurred or payments of any profits made as a result of the infringement. Registering a work with the U.S. Copyright Office also gives an author additional financial benefits, see [How do I register](#)

⁴ Copyright education web site, <http://copyright.lib.uci.edu/publicdomain.html#b>

⁵ U.S. Copyright Office, "Copyright Basics," <http://www.copyright.gov/circs/circ1.html#cr>

⁶ U.S. Copyright Office, "Copyright Basics," <http://www.copyright.gov/circs/circ1.html#cr>

⁷ Copyright education web site, <http://copyright.lib.uci.edu/publicdomain.html#d>

⁸ PDF version of the Act from the U.S. Government Printing Office, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_public_laws&docid=f:publ304.105.pdf

a copyright?⁹ In addition to legal remedies, digital rights management (DRM) technology could be used to limit access to original works on the Internet to only those authorized to use these works.

Copyright Ownership at UC

Copyright ownership is typically addressed in higher education through institutional policy or written agreements. The University of California has policies that clarify who owns the copyright to original works created at UC and how the rights of ownership and royalties are allocated between the authors and the University. The 1992 University of California Policy on Copyright Ownership¹⁰ provides explicit guidance regarding all categories of original works (except course materials) created by the UC community. Additionally, a 2003 Proposed Policy on Ownership of Course Materials¹¹ proposes to supplement the existing 1992 *Policy* to address the allocation of rights of ownership for materials prepared for instructional purposes. For more information on current UC ownership policies and practices, see [UC Quick Guide] and Copyrighted Works Created at the University of California.¹²

Who is an author?

Under copyright law, the creator of the original expression in a work is its author. The author is also the owner of copyright unless there is a written agreement by which the author assigns the copyright to another person or organization, such as a publisher. In cases of works made for hire, the employer or commissioning party is considered the author. For more information on ownership by category of work at UC, see [UC Quick Guide] and Section IV¹³ in the *Policy on Copyright Ownership*.

What is a work made for hire?

Although the general rule is that the person who creates the work is its author, there is an exception to that principle. The exception is the work made for hire doctrine, which is a work prepared by an employee within the scope of his or her employment; or a work specially ordered or commissioned in certain specified circumstances. When a work qualifies as a work made for hire, the employer or commissioning party is considered its author. The copyright of a work made for hire is 95 years from publication or 120 years from creation, whichever comes first. For more information on UC work made for hire categories, see [UC Quick Guide].

What is joint authorship?

A joint work is a work prepared by two or more individuals, with the intention that their separate contributions be merged into a single work. A joint author can also be an organization or a corporation under the work made for hire doctrine.

Absent an agreement to the contrary, authors own the work jointly and equally. Each joint author, therefore, has the right to exercise any or all of the exclusive rights inherent in the joint work. For more information on the exclusive rights of the copyright owner, see What is copyright?¹⁴ This means that each author can grant third parties permission to use the work on a nonexclusive basis without the consent of other joint authors. Each author may also transfer his or her entire

⁹ Copyright education web site, <http://copyright.lib.uci.edu/ownership.html#a4>

¹⁰ Copyright education web site, <http://copyright.lib.uci.edu/pcoi.html>

¹¹ Copyright education web site, <http://copyright.lib.uci.edu/pocmdi.html>

¹² UCOP Office of Technology Transfer, <http://www.ucop.edu/ott/crworks.html>

¹³ Copyright education web site, <http://copyright.lib.uci.edu/pcoiv.html>

¹⁴ UCOP Office of Technology Transfer, <http://www.ucop.edu/ott/crbasics.html#what>

ownership interest to another person without the other joint authors' consent. Each author may also update the work for his or her own purposes. Additionally, each joint author has a duty to account to the other joint authors for any profits received from licensing the joint work.

For a number of reasons collaborators should try to clarify joint ownership interests in a written (or even an oral) agreement -- clarifying such issues as ownership and use issues, rights to revise the works, marketing and sharing of any revenue, and warranties against copyright infringement. At UC the ownership of joint works is determined by assessing the category of work for each of the contributors as defined in Section V¹⁵ of the *Policy on Copyright Ownership*.

When two or more people collaborate to create a single copyrighted work, the duration of the copyright is the lifetime of the last living author plus 70 years. If one of the joint authors is an organization, e.g., the University of California, the copyright would last 95 years from publication or 120 years after creation, whichever comes first.

Transfer of copyright to publishers

Copyrights can be bought, sold, willed to others, or given away. A transfer of the copyright or an exclusive grant or license to use the work is a transaction that must be conveyed in writing. Publishers commonly require an author to transfer his/her copyright to the publisher as a condition of publication. A complete transfer of copyright to a publisher restricts a faculty member's right to use the work in future teaching and research. UC faculty members facing this situation should not hesitate to try to negotiate new terms. Faculty members may wish to insert language in these agreements that reserve rights to use their own works for their teaching and research at UC. Other options include retaining rights to an electronic version for posting on the faculty member's own Web site; retaining rights to all pre-publication drafts; or granting others permission to use the work for nonprofit educational purposes.

¹⁵ Copyright education web site, <http://copyright.lib.uci.edu/pcov.html>